

JOHNNIE B. GRYDER

IBLA 78-558 Decided December 5, 1978

Appeal from decision of the Utah State Office, Bureau of Land Management, dismissing protest against pending oil and gas lease offer U-40727.

Vacated and remanded.

1. Oil and Gas Leases: Applications: Generally

There is no prohibition against an oil and gas lease offeror's using an address which is commonly used by other offerors.

2. Oil and Gas Leases: Applications: Generally

A general allegation that an oil and gas lease offeror has not complied with securities laws is not proper for consideration by the Department of the Interior, which has not been delegated the responsibility for enforcement of securities laws, absent a showing that his activities, including the filing of lease offers, have been judicially enjoined.

3. Oil and Gas Leases: Applications: Drawings—Oil and Gas Leases: Applications:
Sole Party in Interest—Words and Phrases

"Interest." Where a partner in a firm, or business associate, or an officer of a corporation which is engaged in the oil and gas business, files an oil and gas lease offer individually in his own name, the partnership/corporation/association may have a claim to any benefits accruing to the individual from the lease, owing to the partnership agreement, corporate by-laws, or personal contract,

due to the partner's/officer's/associate's fiduciary duty to hold any opportunity obtained individually for the exclusive use and benefit of the firm. This claim is an "interest" under 43 CFR 3100.0-5(b), and failure to disclose it within 15 days of the filing of the offer, as required by 43 CFR 3102.7, subjects the offer to rejection.

4. Oil and Gas Leases: Applications: Drawings—Oil and Gas Leases: Applications: Sole Party in Interest

Where an oil and gas lease offeror has indicated that he is the sole party in interest in the offer, but a protestant shows that he is a member of a firm which bears his name and the name of another, that the firm is engaged in the oil business, and that the address of record on the lease offer is the address of the business firm, the case will be remanded for an investigation to ascertain if there has been a violation of 43 CFR 3102.7 and/or 43 CFR 3112.5-2.

APPEARANCES: Johnnie B. Gryder, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The drawing entry card of John M. Beard was drawn with first priority in the June 1978 drawing of simultaneous offers for parcel UT 75 at the Utah State Office, Bureau of Land Management (BLM). The card of Johnnie B. Gryder was drawn with second priority in this drawing.

Sometime around July 18, 1978, ^{1/} Gryder filed a protest against Beard's offer, alleging that Beard had violated the regulations in that "the names of other parties of [sic] interest was [sic] not on the card drawn as winner of Parcel 75# [sic]," and that the multiple filings prohibition had been violated by this offer as well. Gryder stated that she intended to offer proof of the existence of other undisclosed parties in interest at an address used by them in common. Gryder also alleged that the offer was invalid because the offeror used the common address, and because it violated securities laws.

On July 27, 1978, BLM issued its decision dismissing Gryder's protest. BLM held therein that the question of violations of the securities laws was not a proper one for consideration by the

^{1/} The protest was not date-stamped by BLM.

Department of the Interior, that it was not improper for Beard to have used an address on his drawing entry card which is used in common with other applicants, and that Gryder had failed to show that Beard had violated the prohibition against multiple filings.

[1, 2] As it appeared before BLM, Gryder's argument was limited to unsupported allegations about other parties in interest, charges that Beard had violated securities laws, and a challenge to the use by Beard of a common address. In its decision, BLM correctly concluded that it was not improper for Beard to have used a common address on his drawing entry card. It is well established that so doing does not, of itself, invalidate an offer. Dexter B. Spalding, 37 IBLA 4, 6 (1978); Bruce E. Watkins, 36 IBLA 168, 169 (1978); Virginia L. Jones, 34 IBLA 188, 191 (1978); Nadine Sanford, 31 IBLA 184 (1977). General allegations that an oil and gas lease offeror has not complied with securities laws are not proper for consideration by the Department of the Interior, which has not been delegated the responsibility for enforcement of securities laws, absent a showing that his activities, including the filing of lease offers, have been judicially enjoined. Dexter B. Spalding, *supra* at 5-6; Virginia L. Jones, *supra* at 193. BLM also properly rejected appellant's other contentions as unsupported.

However, on appeal, Gryder has submitted a copy of the following letterhead: "BEARD AND LEEMAN[,], Oil Producers[,], Fifty Penn Place – Suite 1450[,], Telephone (405) 842-3327[,], Oklahoma City, Oklahoma 73118." The address in question is the same as that used by John M. Beard on his drawing entry card and, allegedly, is also the same as the address used by one Don J. Leeman in making oil and gas lease offers.

[3] This letterhead clearly indicates that Beard and Leeman are associated in the business of oil production. This fact lends credence to Gryder's assertion that Bear's offer was invalid because it did not bear the names of all parties in interest to the offer, as it is entirely possible either that Leeman would be entitled to share in the lease, if issued, under the terms of any contract, partnership agreement, or corporate by-laws, or that the "Beard and Leeman" firm would be entitled to the proceeds of the lease pursuant to Beard's fiduciary duty to share the proceeds with his firm.

We held in William R. Boehm, 36 IBLA 346 (1978), and William R. Boehm, 34 IBLA 216 (1978), that, where an officer of a corporation engaged in the oil and gas business files an oil and gas lease offer in his own name, the corporation (not the offeror) would usually be entitled to receive the primary benefits of the offer. This is because the officer has a fiduciary duty under the doctrines of corporate law to hold any opportunity obtained individually for the exclusive use and benefit of the corporation, where the corporation might seek the opportunity itself. William R. Boehm, *supra* at 347;

William R. Boehm, *supra* at 217; Graybill Terminals Co., 33 IBLA 243, 244-5 (1978); Panra Corporation, 27 IBLA 220, 221-222 (1976).

If the firm, "Beard and Leeman" is a partnership, rather than a corporation, the fiduciary duty of a partner is usually at least equal to that of a corporate officer. Where a partner in a firm which deals in oil and gas rights files an oil and gas lease offer, the firm ordinarily would be entitled to receive any benefits derived from the offer, owing to the partner's fiduciary duty to the firm. As the Supreme Court observed in Latta v. Kilbourne, 150 U.S. 524, 541 (1893):

[It is] well settled that one partner cannot, directly or indirectly, use partnership assets for his own benefit; that he cannot, in conducting the business of a partnership, take any profit clandestinely for himself; that he cannot carry on the business of the partnership for his private advantage; that he cannot carry on another business in competition or rivalry with that of the firm, thereby depriving it of the benefit of his time, skill, and fidelity without being accountable to his copartners for any profit that may accrue to him therefrom; that he cannot be permitted to secure for himself that which it is his duty to obtain, if at all, for the firm of which he is a member; nor can he avail himself of knowledge or information, which may be properly regarded as the property of the partnership, in the sense that it is available or useful to the firm for any purpose within the scope of the partnership business.

If a partner does engage in a competing business of the same nature as the firm's enterprise, equity may compel him to account for and pay over to the firm all profits made therein. Holmes v. Keets, 58 F.Supp. 660 (D.D.C. 1945), *aff'd*, 153 F.2d 132 (D.C. Cir. 1946); 68 C.J.S. § 106. Thus, where a business associate, a partner in a firm, or an officer in a corporation which is engaged in the oil and gas business, files an oil and gas lease offer in his own name, the partnership, corporation, or association may have a claim to any benefits arising to the associate, partner, or officer from the lease.

Appellant has provided sufficient indicia of an undisclosed interest to warrant further inquiry to ascertain whether there has been a violation which would require rejection of Beard's offer. *Cf.* Georgette B. Lee, 3 IBLA 172 (1971).

On remand, BLM should determine whether "Beard and Leeman" or Leeman, individually, was entitled to receive a portion of any lease won by Beard under any joint venture contract, partnership agreement, corporate by-laws, or any other kind of association. It may be that

Beard will be able to show that neither "Beard and Leeman" nor Leeman is entitled to any share of leases for which he applies individually, possibly owing either to some express provisions in the partnership agreement or corporate by-laws overriding the fiduciary duty described above. William R. Boehm, 34 IBLA at 217 note 1; Graybill Terminals, supra at 243.

However, if it is determined that either "Beard and Leeman," or Leeman individually, is entitled to direct or indirect lease benefits won by Beard individually, such entitlement is an "interest" in Beard's offer under 43 CFR 3100.0-5(b), and Beard's offer must be rejected, as he did not so indicate on his drawing entry card and did not submit a statement disclosing the existence of this interest within 15 days of the filing of the offer, as required by 43 CFR 3102.7. On remand, BLM should also investigate to determine whether "Beard and Leeman" or Leeman filed offers for parcel UT 75. If so, Beard's offer would perhaps violate the prohibition against multiple filings in 43 CFR 3112.5-2 as well, and rejection of all such offers would be required. McKay v. Wahlenmaier, 226 F.2d 35, 44-46 (D.C. Cir. 1955); William R. Boehm (two cases), supra; Graybill Terminals, supra; Panra Corporation, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and remanded for further action consistent with this decision.

Edward W. Stuebing
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge

